IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1297 of 2007

Sumathi .. Petitioner

Vs.

1. The State of Tamilnadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-9.

2. The District Collector
   and District Magistrate
   Kancheepuram District
   Kancheepuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.V.Devendhiran
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the son of the petitioner, as the said authority arrived at the subjective satisfaction that the detenu - Selvam @ Vijayaselvam @ Surya is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the mother of the detenu has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to call for the records leading to the detention of the detenu, detained at Central Prison, Puzhal, Chennai by the second respondent vide his order in Memo BDFGISSV No.23/2007. Dated 9/4/2007, to quash the same as illegal and to consequently direct the respondents to produce the body and person of the detenu before this

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Court and to set him at liberty.

3.1. The order of detention dated 9.4.2007 was passed on the basis of ground case in Crime No.24 of 2007 for alleged commission of offences under Sections 341, 294(b), 506(ii), 397, 427 of the Indian Penal Code. The allegation against the detenu was that on 14.2.2007 at about 0830 hours, when Mohammed Rafee parked his auto near ECR Bus Stand and went for taking tea, the detenu waylaid and threatened him by showing pen knife and demanded money. He forcibly plucked Rs.200/- from the shirt pocket of the complainant and robbed wrist watch from him. The complainant shouted with fear and the hearing the same the general public gathered. The detenu threatened them and took a soda bottle and threw it in air and broke the bottles. Due to that the general public and school going children ran away helter skelter in panic. The detenu tried to escape, but the general public and the complainant caught the above accused. On receipt of the complaint, the case was registered and the detenu was remanded.

3.2. That apart, the detaining authority also took note of five adverse cases pending against the detenu in Crime Nos.667 of 2004, 304, 308 and 428 of 2006, and 20 of 2007 for the offences punishable under Sections 302, 379, 392, 397, 307 and 342 IPC.

3.3. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order. The detenu was declared as an "Goonda" and was kept in custody at Central Prison, Cuddalore.

4. The learned counsel for the petitioner invited our attention to paragraph 5(ii) of the grounds of detention dated 9.4.2007, wherein it is stated that the detenu is in remand in Central Prison, Puzhal, Chennai and his remand period was further extended up to 15.3.2007, 29.3.2007 and 12.4.2007, and the proceedings of the District Munsif-cum-Judicial Magistrate, Thirukalikundram dated 30.3.2007, wherein it is stated that the accused was not produced and to be produced on 12.4.2007, and contends that the remand of the detenu was not valid and therefore, the order of detention is vitiated.

5. We have perused the entire materials placed before us and heard the submissions of both sides.

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6. As pointed out by the learned counsel for the petitioner, in paragraph 5(ii) of the grounds of detention dated 9.4.2007, it is stated that the detenu was remanded till 1.3.2007 and his remand period was further extended up to 15.3.2007, 29.3.2007 and 12.4.2007, whereas, at Page 445 of the booklet, in the proceedings dated 30.3.2007 of the learned District Munsif-cum-Judicial Magistrate, Thirukalikundram it is stated that the accused was not produced and

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he has to be produced on 12.4.2007. Thus, it is apparent on the face of the records that there is no valid remand on the date of passing of the detention order. This aspect of the case was not properly considered by the detaining authority and the same vitiates the order of detention.

For the reasons aforesaid, the impugned order of detention suffers for non-application of mind and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 9.4.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:
1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.
2.The District Collector
and District Magistrate
Kancheepuram District
Kancheepuram.
3.The Public Prosecutor
High Court, Madras.
4. The Superintendent, Central Prison, Chennai 66.
5. The Joint Secretary to Government,
Public [Law and Order] Fort St. George, Chennai 9.

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vsv[co]
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